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2 UNITED STATES DISTRICT COURT  
3 WESTERN DISTRICT OF NEW YORK  
-----x

4 CORY EPPS,

5 Plaintiff,

6 v.

1:19-cv-00281-LJV

7 THE CITY OF BUFFALO, DETECTIVE  
8 JOHN BOHAN, DETECTIVE  
9 REGINALD MINOR, DETECTIVE  
10 MARK STAMBACH, DETECTIVE  
11 JAMES GIARDINA, DETECTIVE  
12 ANTHONY COSTANTINO,  
13 DETECTIVE ROBERT CHELLA,  
14 RANIERO MASSECHIA, CHARLES  
15 ARONICA, and CHIEF JOSEPH RIGA,

16 Defendants.

17 -----x

18 February 12, 2021  
19 11:04 a.m.

20 Videoconference deposition of ANTHONY  
21 COSTANTINO, taken by Defendants, reported  
22 remotely by Pamela Grimaldi, a Registered  
23 Professional Reporter, Certified LiveNote  
24 Reporter, and Notary Public within and for  
25 the State of New York.

APPEARANCES (ALL REMOTE PARTICIPANTS):

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STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by  
and between counsel for the respective  
parties hereto, that all objections, except  
as to form, are reserved to the time of  
trial.

IT IS FURTHER STIPULATED AND AGREED  
that the deposition may be signed and sworn  
to before any officer authorized to  
administer an oath.

IT IS FURTHER STIPULATED AND AGREED  
that the sealing and filing of the  
deposition be waived.

Costantino

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ANTHONY COSTANTINO,

called as a witness, having been first  
duly sworn/affirmed by Pamela Grimaldi,  
Registered Professional Reporter and  
Notary Public of the State of New York,  
was examined and testified as follows:

EXAMINATION

BY MR. RICKNER:

Q. Can you please spell your last  
name for the record.

A. It's C-O-S-T-A-N-T-I-N-O.

Q. Okay. And I suppose I'm not the  
first person to accidentally put an extra N  
after the first O?

A. No, you're not. I get that all  
the time, believe me.

Q. A lot of people call me Rick for  
the same reason.

So are you -- when you left the  
Buffalo Police Department, were you still a  
detective sergeant?

A. When I left the Buffalo Police  
Department, was I still a detective  
sergeant?

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Q. Right.

A. Yes. That was my final rank,  
yes.

Q. Okay. I'm going to call --  
sorry. My printer's in the background.  
I'm going to refer to you as  
Detective Costantino, and hopefully I won't  
accidentally throw in an N throughout the  
proceedings.

A. I understand.

Q. Have you ever had your deposition  
taken, Detective?

A. For a civil matter?

Q. Yes. I don't know that there are  
criminal depositions in this case.

A. No, never did.

Q. Okay. Have you testified in  
court?

A. I have.

Q. Have you testified at grand  
juries?

A. I have.

Q. Have you ever been cross-examined  
with your testimony in a grand jury while

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you were on the stand in a criminal trial?

A. The grand jury?

Q. No. Were you ever cross-examined with your grand jury testimony in the subsequent criminal trial?

A. Yes, I have.

Q. So it's fair to say that you understand the importance of being clear and accurate in your testimony today?

A. I do, yes.

Q. There are a few ground rules -- and you're already doing a great job, and I suspect your counsel has gone over this with you, but just to be sure we get a nice, clear record, there's a few rules we need to follow.

A. Okay.

Q. The first is that I ask long, rambling questions, and I'm sure you're going to know exactly where I'm going even though I'm still talking and talking, but you need to let me finish the question before you jump in with the answer so it doesn't go over the court reporter or

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doesn't mix itself up. Do you understand?

A. I understand.

Q. You also just gave me a head nod, which is perfectly fine, however, the court reporter can't take down gestures. So if you're going to respond, you need to do verbally yes, no, rather than uh-huh or a nod of the head, even though we are on video and everybody can see your face, it just makes it better for everyone. Do you understand?

A. I understand.

Q. Great.

You can take a break if you want. Just do me a favor, finish answering the question that's been posed before you, you know, leave the chair. Do you understand?

A. Yes, I do.

Q. Fantastic.

Now, what year did you graduate high school?

This is not a trick question.

A. 1953.

Q. Okay. When did you join the

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Buffalo Police Department?

A. 1967. It was June of 1967.

Q. Did you go to college?

A. Yes, I did.

Q. Did you complete college?

A. I did.

Q. Did you get any advanced degrees afterwards?

A. I had a bachelor's degree just in criminal justice, and a science degree from a community college.

Q. So would that be an AB and a BA?

A. Yes. And those two colleges I went to while I was working as a police officer on -- part-time.

Q. Okay. So I guess you've sort of jumped into my next question. Did you work for another police department or did you have another role in law enforcement prior to joining the Buffalo PD?

A. No.

Q. Would it be fair to say, then, that you joined the Buffalo PD maybe in 1954 in some capacity?



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A. Oh, no, no. After I graduated, I worked for the City of Buffalo as a sanitation driver, and then after that I worked for UPS as a truck driver and a union steward.

Q. So would it be correct to say that you went to college maybe not right after high school, but some years later?

A. Yes. While I was a police officer.

Q. Okay. I guess I'll phrase it this way: Between 1953 and 1967, did you hold any positions in law enforcement?

A. I did not.

Q. When you got to the Buffalo Police Department, did you go through some sort of training?

A. Well, in June of 1967 when I became a police officer, we went to the police academy. It was a six-months thing, and I had training there as a police officer.

Q. While you were at the training academy, did you have any training with

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regards to lineups? And I mean physical,  
in-person lineups.

A. Not much.

Q. When you say "not much," what did  
they instruct you with regards to --

A. Remember, when you go to the  
police academy, you're going there as a  
police officer, and you're involved more on  
public safety, patrolling, things of that  
nature. And the people that came in and  
taught us, there were, like, segments of  
certain things from the DA's office or  
about fraud, robbery, stuff like that.

Q. With respect to your training  
regarding lineups while you were at the  
police academy, were you instructed that  
there was anything that you shouldn't do  
with respect to a lineup?

MS. HUGGINS: Form.

You can answer.

THE WITNESS: Repeat the  
question.

Q. That wasn't a particularly good  
one.

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While you were at the police academy, did any of your instruction involving lineups concern what you should or should not do with respect to lineups?

A. It was an overall concept of what you should do and maybe not do, but I don't recall what not do. I remember doing the right thing most of the time.

Q. Okay. Well, we'll -- what was that overall concept?

A. Well, they would come in -- you would have to have at least five people in the lineup that looked similar to the person that's standing in the lineup. And we were taught that there would be two lineups. They'd come out on a stage -- in fact, we visited the lineup room, which was at the City of Buffalo, 74 Franklin. And the person would have placards on their chest, numbers, and see if the witness could identify someone. And if the person did pick someone, that lineup would go into another room, they would change numbers and positions of the lineup, and come back out

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again and see if that person could pick the person wanted or not wanted in that lineup again. Basically that.

Q. Now did you -- withdrawn.

So would it be correct to say that this practice of using two lineups with the same suspect and fillers was actually taught to you at the police academy?

A. Yes. But it was probably in one session, that I remember. I was taught more of that when I became a detective.

Q. Okay. Now, while you were at the police academy, did you receive any instruction regarding photo arrays, meaning a lineup using photographs rather than a physical body?

A. No. In the police academy, really, police officers weren't taught that. We knew about lineups, but not much. It was really a -- kind of a fast thing. Like I said, we would learn more after, when you got -- as a detective when you would maybe use lineups. As a police

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officer in patrol, we very seldom got involved in lineups.

Q. And while you were at the police academy, do you ever remember hearing about *Brady* material or a case called *Brady v. Maryland*?

A. I did, yes.

Q. You remember that?

A. *Brady* material, yes.

Q. Okay. What is *Brady* material?

A. Well, evidence -- any evidence that you would discover would have to be full disclosure to give that evidence that's pertinent to the case to the Court or to the defense or both.

Q. Would it be fair to say that you didn't have direct contact with the defense, but, rather, it would go through the prosecutor?

A. Yes.

Q. And did you understand that *Brady* material needed to be regarded -- for example, if somebody gave you exculpatory information in an interview, you needed to

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actually write it down even if you hadn't written it down yet?

A. Yes. If you got information, you had to write it down so you don't forget.

Q. Now, how long were you a patrol officer?

A. I became a detective -- well, I was acting detective in 1974, and then in 1976 I became a full detective.

Q. In 1974 did you have any particular posting as a detective?

A. What do you mean "posting"?

Q. Well, I mean, would it be correct to say that there are multiple different areas, both physically and with respect to the types of crimes they are investigating, for detectives at the Buffalo Police Department?

A. When I first became a detective in 1976, I was assigned to C District detectives, and that detective -- that district covered three precincts. And those three precincts could handle anything from burglaries, assaults, things like

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that. We didn't handle homicides or robberies because there were special squads that did that. But anything else like that, criminal mischief, anything, we would handle that.

Q. Now, you know, after -- withdrawn.

How long were you assigned to the C District?

A. From 1976 to 1980, because Commissioner Cunningham at that time made the decision that some -- or detectives should not be in districts; they should be in direct precincts. So the precinct that I was assigned to then was Precinct No. 5, which was the West Side of Buffalo, and Precinct 5 would take care of any crime that occurred in that precinct.

Q. How long were you assigned to Precinct 5?

A. Well, that was 1980. 1990 I was made detective sergeant, promoted as detective sergeant, and I went then to Precinct 6, which was the East Side of

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Buffalo.

Q. Now, what does it mean to be a detective sergeant?

A. Well, in that time you were all still a detective, regardless. And when I was in C District, there was a lead sergeant that was there, and the lead sergeant would call, more or less, the shots. But before that, before him, there was an assistant chief. Assistant chief would be in charge of the district, and the lead sergeant would be in charge of just a group of detectives. And I would be one in that group.

When I made sergeant, then, at 6, there was four or five detectives that when I got there, I was more or less their sergeant, but believe it or not, they were there before me and, you know -- I was kind of in charge of them, but not like, I'm the boss, you know. Because when you got there, there was a captain and several lieutenants that was before me that were there at that precinct.



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Q. Just going back to 1990 in your role as detective sergeant, did you have to supervise other detectives?

A. Could you state what "supervise" means, at least in your mind?

Q. Let me ask it differently.  
There are duties that an ordinary detective would have at a precinct, right?

A. Uh-huh.

Q. You have to say yes or no.

MS. HUGGINS: You have to say yes or no.

A. Yes.

Q. I know, it's very unnatural, but we've got to keep the record clear.

A. I know. I'm sorry.

Q. As a detective sergeant back in 1990, the precinct, you had additional duties beyond that of an ordinary detective, right?

A. That's correct.

Q. What were those additional duties?

A. Well, there was four of them, and

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when I -- two would be on WVs, if you -- it was weekly vacation, they called that, and I would have two when I would work with them. And if we got a call, we'd go out together. But it was almost -- we just would -- the three of us would just talk about the case and do it.

Now, if there was a statement to be taken, I might tell one of the detectives, you know, You take that statement. So things like that. But as far as me being like their complete boss, no. Even though I was a sergeant, it was kind of an equal thing, because most of the time they might have been older than me and they were there longer than me, so you kind of respected that.

Q. Okay. So how long were you a detective sergeant at Precinct 6?

A. Well, then I was promoted to homicide. And how I got -- well, go ahead. I was promoted to homicide.

Q. Okay. When were you promoted to homicide?

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A. 1993.

Q. And you used the word "promoted."  
How is --

A. That's -- go ahead. I'm sorry.

Q. Sorry.  
How is going to homicide a  
promotion?

A. Well, at that time it was by  
seniority, and you would put your name on a  
list, the police department, and say that I  
wanted to go to sergeant, or to a certain  
district, or homicide, or anywhere, and  
once that name -- your name came up and you  
had the seniority to get there, you went  
there by seniority.

Q. Great.  
And did you -- so you actually  
made an application to go to homicide?

A. Yes.

Q. When you got to the homicide  
squad in 1993, was there a particular group  
that you were assigned to?

A. Yes.

Q. What was the name of that group?

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A. Well, they wouldn't have no names for a group. Like, you go there, and the chief -- at that time was Chief Charles Fieramusca, when I got there -- and he would just say, Okay, you work with Ray Masecchia, you work with that person, and that's who you work with.

Q. Okay. Let's just go back to 1993. Who were the people that you worked with?

A. Ray Masecchia, Juan Morales, Charlie Aronica, Mark Stambach. And that's about it, you know. And there were other detectives there and other sergeants, and sometimes they would intermingle, if a case -- a large case came in, a lot of them were there, you know. But basically you took care of the person that you were kind of in charge of.

Q. Okay. You were still a detective sergeant at that point?

A. I was.

Q. So did you have a supervisory role with respect to Masecchia, Morales,

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Aronica, and Stambach?

A. The only thing, if you want to -- see, there was also a lieutenant there, administrative lieutenant, so he was the head of me, and then the head of him was the chief, Chief Fieramusca, and later on Chief Riga, and they would -- actually would call the shots.

The only thing that I would do if I was called out on a homicide, I would tell the chief that was there on duty at night that I would need three -- three detectives to come in because they got about two or three statements, we got witnesses here. And I would say, Okay, Ray, you take that statement, or something like that.

But mostly it was kind of a -- we just got along, everybody. It was not a -- you know, sometimes we'd have a -- like a bullshit session, No, I'm not doing that, you do this, that kind of thing. But we always agreed on who would be best for that job, you know.

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Q. Was there a --

A. Some people liked to do autopsies, some people didn't like to do autopsies. So the guy who wanted to do an autopsy, okay, you go do the autopsy, you know. So...

Q. Fair enough.

With this group of, I guess it's you and four other detectives you described, did you guys all work together, sort of, primarily -- I understand that there were other detectives that sometimes came in -- but that was sort of your group?

A. Yes, you worked with your group.

Q. Okay. How many groups were there like that at the detective squad? At the homicide squad.

A. I believe there was three, three groups.

Q. Okay. Now, between 1993 and 1998, did the group of people that you were working with change?

A. Juan Morales, he left the department.

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Q. When did Morales leave your department?

MS. HUGGINS: Do you know?

THE WITNESS: Yes.

MS. HUGGINS: Do you know what year he left?

THE WITNESS: Oh, when he left the department, Juan?

MS. HUGGINS: Yes.

Q. I don't know -- why, I don't care. When is --

A. When did he leave. I'm sorry.

MS. HUGGINS: That's all he's asking.

A. Okay. When.

MS. HUGGINS: If you don't know, you don't know.

A. I don't know. I really don't know.

Q. Okay. So you explained before that there were four people, four detectives that you worked with. Morales was one of them. When Morales left, who took his spot?

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A. Andy Ortiz.

Q. Could you just spell that for the record? Not Andy. The last name.

A. O-R-T-I-Z.

Q. Oh, Ortiz, got it.

A. Ortiz.

Q. Now, in 1997 did you work on a homicide where the victim was named Tomika Means?

A. I did.

Q. Sitting here today, do you have an independent recollection of this homicide investigation, by which I mean that you actually remember it, not that you just reviewed documents or something.

A. It was 21 years ago, but yeah, I remember a lot of it.

Q. Okay. Did you also review documents to prepare for this testimony?

A. I did.

Q. Did any of those help refresh your recollection?

A. It did.

Q. Now, going back to the beginning,



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when did you first become involved with the  
Tomika Means homicide investigation?

A. I don't believe I did the scene.  
I don't recall I did the scene, but I think  
that day I might have been off. I think it  
was the very next day when I came into  
work.

Q. With respect to the Tomika Means  
homicide, was there somebody who was the  
lead detective in that investigation?

A. Well, I would say myself, Ray  
Masecchia, Juan Morales, and maybe Mark  
Stambach did a lot of the work. And, of  
course, this was all with Joe Riga and  
Conwell, Lieutenant Conwell's direction.  
They really were in charge.

Q. Understood.  
And would it be correct to say  
that you would keep Lieutenant Conwell and  
Chief Riga informed of everything that  
occurred in the investigation?

A. Yes. We'd have a session where  
they would explain what happened and what  
we should do and where we should go and

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things like that.

Q. Okay. There are documents, I believe, called P73s. Does that refresh your recollection?

A. Yeah, it does.

Q. Yeah.

You would submit those P73s to Riga, right?

A. Eventually we'd get to Riga, yeah. First it would -- the Dictaphone recorded to our secretary, and then after we -- after the secretary, Marilyn Lanc, looked -- did it and I would read it, if I didn't agree with it, I would correct it, and then eventually it would go to Riga.

Q. Okay.

A. And this is fairly fast, too. It wasn't like two weeks later. You did it right away.

Q. Understood.

MR. RICKNER: Let's just mark -- I believe this is going to be Exhibit 66. EPPS-DA00881. It's a May 27, 1997 P73.

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And the court reporter, Pam,  
you've got all of these?

THE COURT REPORTER: I do have  
the exhibits. Can I digitally mark  
them at the end?

MR. RICKNER: Yes. That's what I  
was going to say. Since you haven't  
worked on this case yet. We're doing  
consecutive exhibits, so the first 65  
somebody else handled. We're going to  
start with 66. And just at the end if  
you can put stickers on all of them and  
make it part of the packet.

THE COURT REPORTER: Sure.

MR. RICKNER: Okay. Thanks very  
much.

(Document Bates stamped  
EPPS-DA00881 and 00882 was marked as  
Exhibit No. 66 for identification, as  
of this date.)

THE WITNESS: Yes, I remember  
that one.

BY MR. RICKNER:

Q. When you say you remember -- I'm

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Costantino 28

sorry. So you're looking at No. 66?

A. Yeah. The composite?

MS. HUGGINS: That's the P73  
EPPS-DA00881?

MR. RICKNER: To 882, yes.

MS. HUGGINS: Oh, 882. Hang on.

MR. RICKNER: It should be two  
pages. Well, the exhibit's two pages,  
and we'll get into the nitty-gritty in  
a second.

MS. HUGGINS: So we're marking  
the composite as 66, not the P73?

MR. RICKNER: Yeah. Both of  
them. I'm going to ask about them in  
conjunction.

MS. HUGGINS: Okay. He has it in  
front of him.

BY MR. RICKNER:

Q. Okay. Great. Can you identify  
Exhibit 66 for the record, what you  
understand it to be.

A. The composite of a person, black  
male, a cap, and his identity, and where it  
was taken, who did it, things like that.

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Costantino 29

Q. Is it also -- do you have a P73 regarding that identikit?

A. Yes, I do.

Q. So I guess here's my question is, is that would this identikit have been -- well, withdrawn.

What is an identikit?

A. Well, at that time we didn't have a person at the Buffalo Police Department who could do composites. We went to the Tonawanda Police Department, and -- with the witness. And with her recollection, she came up with a composite of the person she believed was involved with this case.

Q. Okay. Now, it says --

MS. HUGGINS: Rob, I apologize. Before we go further, since we jumped the gun with swearing in, I forgot to note on the record that we're doing read and sign.

MR. RICKNER: Oh, yeah, that's fine.

MS. HUGGINS: I just -- I forgot earlier and --

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Costantino 30

MR. RICKNER: You can also do that at the end, I think maybe more typically. And you want 60?

MS. HUGGINS: Please, Rob. Thank you.

MR. RICKNER: Yeah, of course. That's been our practice.

MS. HUGGINS: My apologies. I just didn't want to forget again.

MR. RICKNER: Nope. I understand. You've got to put it on the record or you lose it.

BY MR. RICKNER:

Q. All right. So going back to Exhibit 66 and the identikit of the black male, is this a computer program? If you know.

A. I don't know. At that time I'm not sure.

Q. Is there an operator listed?

A. Yes. Detective -- yeah. Vanderwerf. I don't remember him.

Q. Okay. Well, would you have been involved in this identikit process with the

Costantino

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2 witness?

3 A. The only thing we did was, my  
4 partner and I, picked up Jackie Bradley and  
5 drove her to the Tonawanda Police  
6 Department. And she went on what she had  
7 remembered and gave her identification to  
8 this operator, and we were assisted by this  
9 detective, Norm Francavilla. He's not  
10 there anymore. And that was it. And she  
11 formed a person, sketch, and that was it.  
12 We left and thanked the Tonawanda Police  
13 Department. That was it.

14 Q. Okay. Going back for a second,  
15 what is the purpose of an identikit?

16 A. Well, to see if we can, in her  
17 mind, or in anybody's mind, could remember  
18 who this person was and to get a clearer  
19 picture of him.

20 Q. Once you had an identikit of the  
21 suspect, where would it be sent?

22 A. We took it with us and went back  
23 to the Buffalo Police Department, and we  
24 give it to Joe Riga.

25 Q. Was the identikit posted

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Costantino

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anywhere?

A. I think it was in the paper.

Q. And you guys would have provided it to the newspaper for the purposes of it being printed?

MS. HUGGINS: Form.

You can answer.

A. Well, not "you guys." You mean Chief Joseph Riga? That's who would do it. I wouldn't say, Okay, put it in the paper. That wasn't my -- that's not my duty.

Q. So to be clear, Chief Riga made the decision to put this identikit into the paper to try to find the suspect?

A. That's correct, yes.

Q. And you would have had a copy of this identikit in your possession as part of the investigation file?

A. We'd put it in the file, yes. I wouldn't have it personally, but it would be in the file.

Q. And you would have made sure you were familiar with it as part of your investigation?



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Costantino

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A. Yes.

Q. And would it be fair to say that the other detectives you worked with would have also been familiar with this identikit?

A. You mean the ones I particularly worked with?

Q. Yes.

A. Well, I think most of the detectives that were there in homicide at the time would have access to that file too.

Q. That's not exactly what I'm saying. What I'm wondering is, for example, would Raniero Masecchia have looked at this as part of his investigation so he knew what the suspect looked like?

A. Well, he was in charge to do this at the time, but I was with him.

MS. HUGGINS: I think his question is specifically do you know if Ray Masecchia was familiar with that.

A. Oh, yes. Naturally.

Q. And would that also be true of

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Costantino

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Morales?

A. Yes.

Q. And Stambach?

A. Yes.

Q. And Aronica?

A. Yes.

Q. Now, going back to the P73 that we've marked as Exhibit 66. Do you see that?

A. Yes, I do.

Q. Would it be correct to say that the identikit would actually be stapled or attached to this P73, or would it have been separate?

A. I think it would be separate.

Q. Now, in the subject line it says, Dictated R. Masecchia.

Do you see that?

A. Yes.

Q. From your work with Detective Masecchia, are you familiar with how he created P73s?

A. Well, from information that you obtained, you memorialized it and then you

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Costantino

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would make it into a P73.

Q. I'm actually being a little bit more granular. What I mean is is that -- for example, would Detective Masecchia have typed up this P73?

A. Yes. It's a short P73, but he might have -- I don't really recall if he did that or he did it with Marilyn Lanc.

MS. HUGGINS: Do you know how Ray Masecchia prepared this P73?

A. I don't understand the question.

Q. It says "dictated." Do you see that, in the subject line?

A. Well, he might have dictated this to Marilyn Lanc, and Marilyn Lanc, then, would generate the P73.

Q. When Detective Masecchia would dictate a P73, did he use a tape recorder?

A. A Dictaphone, absolutely, yes. That's how we did most of our P73s. I had a Dictaphone, sent it, and Marilyn Lanc would pick it up, and then she would then do this P73 that we would have to correct it if anything was wrong with it.

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Costantino

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Q. And did you also use a Dictaphone to make P73s?

A. All of us did. At least I did. I won't speak for anybody else. But yeah, we were taught to do that.

Q. Okay. Those Dictaphone tapes, after the P73 was completed, what would you do with them?

A. You'll have to ask -- I don't know. I really don't. I don't know.

Q. Well, did you do anything with them?

A. Probably -- probably who would know more about that would be, again, Chief Riga or Lieutenant Cornwall. That wasn't my expertise at that time.

Q. I understand that. But I mean in a very practical matter, if you put the tape in and you're using it for your own dictation, and you then -- then you give the tape to Lanc, did you ever get it back?

A. No. Marilyn Lanc would pick it up off the phone, off the recording, and we never would even see the tape. Do you

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understand?

Q. Yeah, yeah. Absolutely. Okay.

A. We would just dictate it on the Dictaphone and then she would take care of it after that.

Q. Did you ever use these Dictaphones to take witness statements?

A. No, no.

MR. RICKNER: So I'd like to mark -- it's kind of small, but it's EPPS-DA00085 to 86. It's the Bradley statement.

MS. HUGGINS: The witness has it.

(Bradley Statement, Bates Nos. EPPS-DA00085 and 86, was marked as Exhibit No. 67 for identification, as of this date.)

BY MR. RICKNER:

Q. And this is Exhibit 67. Detective?

A. Yes.

Q. It says in the top paragraph that you typed this statement and the questions were asked by you. Is that correct?

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A. Yes.

Q. Was anybody else in the room when you did this?

A. I don't recall who was in the room, but there was always somebody in the room when we took a statement.

Q. So at least yourself and one other person would have been in the room when this statement was taken?

A. Absolutely.

Q. Would it be fair to say it could have been even more?

A. No, I don't believe that. It might have been just one person and Riga would look at it, things like that, but that would be about it. Probably in the room with me probably was Masecchia, I imagine, because we worked a lot together, or Charlie Aronica.

MS. HUGGINS: Do you have a specific recollection?

THE WITNESS: No, I don't. I don't.

Q. When you take a statement like

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Costantino 39

the Bradley statement marked as Exhibit 67,  
do you take notes before you type it up?  
A. I do.  
Q. And what did you use to take  
notes on?  
A. A piece of paper, yellow sheet of  
paper.  
Q. One of these (indicating), like  
an ordinary pad of paper?  
A. Yes.  
Q. Okay. After you were done taking  
the statement, what would you do with your  
notes?  
A. Put it in the file.  
Q. Would you attach it to the  
statements itself?  
A. I believe so.  
Q. It says here on the top that the  
interview started at 6300 hours.  
Withdrawn.  
At the top here, it includes the  
words, Started at 6300 -- or 0630 hours.  
Do you see that?  
A. Yes, I do.

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Costantino 40

Q. Do you know when the interview --  
whether the -- withdrawn.

Does that time indicate when you  
started taking the written statement here  
or when the interview actually started? Or  
something else?

A. When the interview started, I  
would put that down.

Q. Can you say when the interview  
ended?

A. When I finished typing the  
statement. It was all together.

Q. I understand that conceptually.  
I mean what time.

A. I don't know. I don't recall.

Q. Now, if you look at the maybe  
bottom quarter of the Tomika Means'  
statement, there's a question and answer  
with respect to what the person who shot  
Tomika looked like. Do you see that?

A. It's on the first page?

Q. Yes.

A. Okay. Yeah. I see it.

Q. And it says that, you know, he's



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Costantino

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in his mid 20s, lighter-skinned black male with a goatee, 5-8, 5-9, 250 pounds, and he had pimples on his face.

Do you see that?

A. That's correct.

Q. And going back to Exhibit 66, would it be correct to say that this identikit doesn't mention height or weight? And it's unclear to me whether or not pimples are shown. Do you see that?

A. Yes.

Q. Would this additional information regarding the suspect have been made available to the other detectives?

A. Well, it's put in the file, and Joe Riga, I'm sure, would make mention of this because it was -- she was a good witness at the time and was with Tomika Means, and I'm sure we had a bull session, and he mentioned that the statement was taken, you should read the file, things like that, yes.

Q. When you say "bull session," I think I know what you mean. But would it

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Costantino

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be correct to say that during the course of the investigation you would sit down with Chief Riga and other detectives and talk about the case?

A. Absolutely.

Q. And about how often would you have these discussions with an investigation like the Means homicide?

A. Probably every day, until it was solved or -- you know.

Q. And would it be correct to say that all of the detectives that were working actively on that homicide would be part of this bullshit session?

A. Yes, if they were not off that day for some reason, you know. But most of the time, yes.

Q. Okay. It would be correct to say that the purpose of this bullshit session was both to brainstorm ideas with regard to the investigation and to make sure everybody knew the pertinent facts?

A. Right. That everybody would be on the same page, yeah.

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Costantino 43

MS. HUGGINS: What did you call the session? What was the term?

THE WITNESS: Bull session. It is brainstorming.

MS. HUGGINS: I think, Rob -- am I hearing you correctly, Rob?

MR. RICKNER: Well, he used the word, "bullshit" earlier, so I was just adopting that.

A. But that's what I meant as brainstorming.

Q. I'm fine with it. I do the same thing in my practice. Maybe I'll start calling it that.

So going to the second page of the Bradley statement, it says -- there was something to do with a Birchfield's. Do you see that?

A. I do.

Q. What was Birchfield's?

A. Actually, it was a bar right across from Precinct 6 where I was sergeant there for a few years. And it was a bar where people would gather, you know, and --

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Costantino 44

Q. Was Birchfield's known as an area where there were frequent criminal issues?

A. Not during the day. Let's put it that way.

Q. Well, fine. That's probably true of most hotspots. At night was Birchfield's a location where a fair number of crimes were committed?

A. No, I don't think so, because it was right across the street from Precinct 6, so -- you know what I mean? That there was a couple, but nothing that was outstanding.

Q. All right. Did you ever arrest somebody at Birchfield's?

A. No.

MR. RICKNER: We're just going to put up -- can you pull out previously marked Exhibits 15 through, I guess, 36, and also Exhibit 62.

MS. HUGGINS: Say that again, 15 through --

MR. RICKNER: I believe it's 36, and then also Exhibit 62.

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Costantino 45

MS. HUGGINS: 62. Okay.

Give me a moment to find 62. I don't think I have it in the same format.

MR. RICKNER: I think I just got it.

MS. HUGGINS: Unless I'm wrong and it got sent over and I missed it.

MR. RICKNER: It's EPPS-DA16. Actually, Dave sent that one this time.

MS. HUGGINS: The witness has the exhibits.

MR. RICKNER: Okay. Great. Thank you very much.

BY MR. RICKNER:

Q. Can you just take a look at Exhibit 15, Detective, and tell me if you recognize the handwriting.

A. Ray Masecchia.

Q. And I'd like you to look at Exhibit 16 and tell me whose handwriting that is, if you know.

A. Detective Juan Morales.

Q. I'd like you to look at Exhibit

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Costantino 46

16, tell me whose handwriting this is, if  
you know.

MS. HUGGINS: You mean 17?

MR. RICKNER: I do.

A. Detective Masecchia.

Q. And Exhibit 18?

A. See the difference in  
handwriting?

Q. Is that yours?

A. How'd you guess?

Q. Well, I mean, it says AC at the  
bottom. Yeah, I know. That's the way I  
write.

Okay. So looking at Exhibit 18,  
can you just briefly tell me the context in  
which you would have taken these notes.

A. Well, I did a canvass of the  
area, talked to people that may have heard  
something relative to this shooting, it's  
basically a canvass. Usually in a homicide  
you try to see if anybody heard something,  
saw something, things like that. That's  
basically what this is. We did interview a  
couple of people.

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Costantino 47

Q. Would it be fair to say that none of the people that you interviewed heard or saw anything of particular significance?

A. It was early in the morning, a couple -- the store across the street, the lady upstairs said she might have heard something but she wasn't sure, something like that. She might have heard a shot.

Q. But --

A. But at that time in that area there was sometimes a lot of shootings, a lot of shots being fired.

Q. That was actually what I was going to ask. What area is Chelsea and East Delevan?

A. It's the East Side of Buffalo, the best I can describe it. Not too far from Erie County Medical Center.

Q. Does it have a particular name? The neighborhood.

A. East Delevan area. I'm not sure. What do you mean, like a name we would call that area? It's just East Side of Buffalo, Grider, Delevan area, things like that.

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Costantino 48

Q. With respect to -- how far, if you know, was the corner of East Chelsea -- withdrawn.

How far was it from the corner of Chelsea and East Delevan to 1118 East Delevan?

A. 118 East --

Q. 1118.

A. Yeah. It wouldn't be that far. You know, a few blocks.

Q. All right. So moving on to Exhibit 19, do you recognize this handwriting?

A. I'm not sure. It might be Ray Masecchia's, but I'm not sure.

Q. Okay. What about Exhibit 20?

A. Same. It could be Ray, but I'm not sure.

MS. HUGGINS: Do you recognize it?

THE WITNESS: No, I don't.

Q. Do you recognize the handwriting in Exhibit 21?

A. No, I do not.



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Costantino

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Q. What about Exhibit 22?

A. I could not be positive on this one.

Q. Okay. What about Exhibit 23?

A. No, I don't.

Q. Exhibit 24?

A. Not sure.

Q. Exhibit 25?

A. No, not sure.

Q. Exhibit 26?

A. Some of the people write fast.

Q. Look, this isn't -- these aren't trick questions. I'm just --

A. I know. I'm trying to be -- I mean, a couple, maybe, but I don't want to say "maybe" if I'm not positive. You know what I mean?

Q. Understood.

Exhibit 26?

A. No, I have no idea.

Q. Exhibit 27?

A. No, I don't know.

Q. Exhibit 28?

A. Ray Masecchia.

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Q. Exhibit 29?

A. No, I don't know.

Q. Exhibit 30?

A. Nope, I cannot be positive.

Q. Exhibit 31?

A. No, I don't know.

Q. Exhibit 32? The handwriting  
portion on 32, not the printout.

A. No. Sorry.

Q. What about Exhibit 33?

A. No.

Q. The bottom right-hand portion of  
Exhibit 34 where it says, Picture drawn by  
Jackie Bradley -- Jacqueline Bradley.

A. That's my initials, AC. She drew  
the picture and I just initialed her name.

Q. Did you write down the label?

A. Write down the label?

Q. Right. It's titled, Picture  
Drawn by Jacqueline Bradley. I'm just  
wondering if you wrote that.

MS. HUGGINS: He's asking --

A. No, I did not.

Q. Okay.

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Costantino 51

A. She wrote that, I put AC.

Q. Got it.

Did she draw this diagram in your presence?

A. She did.

Q. Was this drawn on or about the time that she gave the statement?

A. Yes. I believe so.

Q. This one is tough to read, but can you tell me if you recognize the handwriting in Exhibit 35.

A. Oh, boy.

Q. I know.

A. Well, there's an AC at the bottom. It's probably mine.

Q. Well, I'd like to do a little bit better than "probably." You could squint your eyes --

A. Well, if there's AC there, and it kind of looks like the way I would put my initials...

Q. Okay.

A. Hold on a second.

Q. That's why I want you to take a

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Costantino

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nice, careful look. We don't want you to make any inaccurate assumptions.

MS. HUGGINS: He's just asking about that page.

THE WITNESS: Yeah.

A. There's other initials here, RM and JM, which is Juan Morales. Could be Juan and what -- usually I would read it, we all read it, and we would put our initials down on some of the so-called notes that we all read it.

Q. Okay.

A. So I'm not sure if this is mine or not. I know my name's -- no, I really don't know.

MS. HUGGINS: Do you recognize the handwriting that's on there? That's the question.

A. No, the handwriting doesn't look like mine.

Q. That's okay.

Exhibit 36, do you recognize this handwriting?

A. No, I don't.

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Q. Can you tell me what Exhibit 36 is? I mean, it's a form of some kind that's been filled out, and I'm just wondering what the form is.

A. It was part of a form.  
It's too vague for me to really give a definitive answer. I don't know.

Q. No problem.  
And the last one, can you pull up Exhibit 62.

A. No.  
Q. You don't know whose handwriting this is?

A. No, I do not.  
Q. Now I'd like to go back to Exhibit 67.

A. Okay.  
Q. If you go to the second page, there's a description of a car, it's an Oldsmobile or Pontiac 6000.

A. I'm looking for where it is.  
Q. It's on the top. Top two inches.  
A. Yeah. Gray or light blue. Yeah.  
Q. Did you, in 1997, have the

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ability to review DMV records to try to  
locate types of cars?

A. No.

Q. If you had the name of a suspect,  
could you then go out and try to find what  
kind of car they had registered in their  
name?

A. Yes.

Q. When somebody says an Oldsmobile  
or Pontiac 6000, what kind of car would  
that be described physically?

A. Well, they are both similar, and  
a four-door sedan.

Q. Would it be correct to say it's  
kind of a boxy car?

A. Yeah, I would say so.

Q. There was also a woman involved  
in the shooting who was in that -- driving  
that Oldsmobile or Pontiac; is that  
correct?

A. Pardon me?

Q. There was also a woman involved  
who was driving that Oldsmobile and  
Pontiac, according to Bradley's statement;

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is that right?

A. That's correct, yes.

Q. Do you remember if an identikit was made of that woman?

A. I don't recall.

Q. Based on the statements in Exhibit 67, can you tell me what details Bradley was able to provide with regards to the female driver?

A. Someone asked if she wore glasses and she said she didn't know.

Light-skinned.

(The court reporter requested clarification.)

A. I asked if she wore glasses, the person that was driving, or witness of this person that did the shooting, and she answered, I didn't believe so.

Q. And you said light-skinned?

A. I said light-skinned, black female, and missing a front tooth. Things like that.

Q. Okay. Any other details?

A. Light-checkered jacket. She said

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she was small, thin frame, and in her 20s,  
approximately, you know.

Q. Going back to --

A. She -- go ahead. I'm sorry.

Q. Going back to Exhibit 66, would  
it be correct to say that if Ms. Bradley  
had done an identikit involving the woman,  
that you would have noted it on Exhibit 66,  
this P73?

A. Yes.

MR. RICKNER: I'd like to mark  
COB1294 through 96 as Exhibit 68.

MS. HUGGINS: The number one more  
time, Rob?

MR. RICKNER: 1294 through 96.

(Interview of Gino Johnson, Bates  
No. COB1294, was marked as Exhibit No.  
68 for identification, as of this  
date.)

MS. HUGGINS: The witness has the  
exhibit.

BY MR. RICKNER:

Q. Can you identify Exhibit 68 for  
the record.



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A. It's a P73.

Q. Did you --

A. Go ahead.

Q. Did you author this P73?

A. I did.

Q. And it says at the top, Interview  
of Gino Johnson. Do you see that?

A. Right. Yes.

Q. What do you remember about Gino  
Johnson?

A. He was supposed to be a friend of  
Ken Pope. Or Paul Pope.

Q. Do you actually -- aside from  
what's written in this document, do you  
remember anything about Gino Johnson?

A. Not much. We had a hard time  
finding him, Bradley found out from one of  
his relatives that he lived in Niagara  
Falls, and we went there and spoke with  
him.

Q. You didn't go there and speak to  
him on May 4, 1998, did you?

A. No.

Q. Did you go to speak to him on or

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about June 28, 1998? Does that sound right?

A. Well, on the P73 I've got: Date, may 4, 1998.

Q. Okay. We've jumped ahead, and we'll go through other documents in a second.

Would it be correct to say that you were also assigned -- would it be correct to say that you also worked on the Paul Pope homicide?

A. Not a lot. Very -- I was not assigned to it. If something came up and Chief Riga said, Can you go take a look at this person on this case, I would go do it, naturally. But I didn't do a lot in this case.

Q. Do you recognize the name Cory Epps?

A. Yeah, I do.

Q. Prior to the Tomika Means homicide, did you know anything about Cory Epps?

A. No.

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MR. RICKNER: I'm just going to collect a series of documents to do together.

Can you pull up EPPS-DA00901? This is going to be Exhibit 69.

MS. HUGGINS: I'm sorry? I didn't hear you, Rob.

MR. RICKNER: 69, this will be Exhibit 69. Does the witness have the exhibit? I'm sorry.

THE WITNESS: I do.

MR. RICKNER: Sorry about that. I omitted that part.

(P73 Bates No. EPPS-DA00901 was marked as Exhibit No. 69 for identification, as of this date.)

BY MR. RICKNER:

Q. Can you identify Exhibit 69 for the record.

A. It's a P73 written by Ray Masecchia, and a lineup that occurred at the police headquarters.

Q. Now, Jacqueline Bradley identified Cory Epps in a photo array prior

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to the lineup; is that true?

A. That's correct.

Q. Were you involved in any way with the photo array that was shown?

A. No.

Q. Do you know how many different photo arrays were shown to Jackie Bradley?

A. I do not.

Q. Do you know if she was shown more than one photo array that contained Mr. Epps's photo?

A. I'm not sure. I wasn't involved in preparing that photo array; that wasn't -- it was other detectives.

Q. Did you ever visit Jacqueline Bradley at her house?

A. I did.

Q. About how many times?

A. I think only once to pick her up, or maybe twice, for the composite, and then to bring her -- when I did bring her to headquarters after the shooting and I took a statement. And then, of course, in the lineup. So maybe two or three times I

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might have picked her up.

Q. Did you ever show her any  
photographs?

A. No.

MR. RICKNER: Let's mark  
EPPS-DA00936 and mark that as Exhibit  
70.

MS. HUGGINS: Could you repeat  
the number, Rob?

MR. RICKNER: It's EPPS-DA00936.  
It says, Record of Lineup in -- the  
Bates number's kind of obscured. I  
should have described it better.

(Record of Lineup, Bates No.  
EPPS-DA000936, was marked as Exhibit  
No. 70 for identification, as of this  
date.)

MS. HUGGINS: The witness has the  
exhibit.

BY MS. HUGGINS:

Q. Can you tell me what Exhibit 70  
is for the record.

A. A Buffalo Police Department  
record of a lineup.

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Q. And the signature is Marilyn Lanc; is that correct?

A. That's true.

Q. Who is Marilyn Lanc?

A. She was our secretary in homicide, and she was there before I got there, and she was a wonderful person.

Q. What was her role? What did she do at the homicide?

A. She did a lot. She did a lot of the paperwork that we generated. She did most of the typing of it. She did the Dictaphone that we spoke of. And she generated this form as well. And if there was a lineup, she would get everybody's name who was going to be at the lineup, people who stood in the lineup, anybody who would bear witness to this lineup, things of that nature. She was a secretary.

Q. Where were lineups conducted at the Buffalo Police Department?

A. On the fourth floor. It's a lineup room, very unique. I don't know. Did you ever see it?

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Q. Me?

A. I'm asking you a question, Rob.

Q. No, I haven't.

A. If you see it someday, you'll be  
impressed with -- at that time.

MS. HUGGINS: Can you just  
identify what building you're speaking  
of?

Q. That's the question I'm asking.

A. 74 Franklin was the Buffalo  
Police Department at that time.  
Headquarters.

Q. And was there a particular  
officer that would pick out the fillers for  
the lineup?

A. Yes.

Q. Who was that?

A. You know, I'm not sure. I don't  
recall.

Q. With respect to the Cory Epps  
lineup, did you pick out the fillers?

A. I did not, no.

Q. It says you were viewing the  
lineup; is that correct?

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A. I was.

Q. Do you remember anything of note regarding the lineup besides the fact that Jackie Bradley chose Mr. Epps?

A. Well, like I said before, it was two lineups. That's the way they conducted it at that time. And she picked Mr. Epps out both times. And that was about it. And the people that stood in the lineup, six of them, including Epps. Nothing was usual about the lineup.

MR. RICKNER: So can we mark COB1126 through 1130, some handwritten notes, and mark those as Exhibit 71.

(Handwritten notes, Bates Nos. COB1126 through 1130, were marked as Exhibit No. 71 for identification, as of this date.)

MS. HUGGINS: The witness has the exhibit.

MR. RICKNER: That was fast.

BY MR. RICKNER:

Q. I'd just like you to take a look at Exhibit 71 and tell me whether or not



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that's your handwriting.

A. It is, yes.

Q. And I'd like you to also take a look at Exhibit 68.

A. Okay. I have it.

Q. Would it be correct to say that Exhibit 71 is the first draft of Exhibit 68?

A. It is, yes.

Q. Now, would you have written Exhibit 71 during the interview of Gino Johnson?

A. Yes.

Q. All right. So I guess what really I'm trying to get at is is that did you take other notes and then draft Exhibit 71 that became Exhibit 68, or is there just Exhibit 71 as part of your regular practice?

A. My regular practice I would have done that. I don't recall taking other notes and then having a couple of notes. This was the one I did, and then from this I did a P73.

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Q. Understood.

MR. RICKNER: Can we mark COB899  
to 900 as Exhibit 71. 72, rather.

(Handwritten notes dated 4/16/98,  
Bates Nos. COB899 and 900, were marked  
as Exhibit No. 72 for identification,  
as of this date.)

MS. HUGGINS: The witness has the  
exhibit.

BY MR. RICKNER:

Q. Do you know whose handwriting is  
on Exhibit 72?

A. Well, my guess -- well, it's Mark  
Stambach's.

Q. Gotcha. Thank you.

Now, do you remember a Detective  
John Bohan?

A. Yes.

Q. And you worked with him?

A. He was in the other wheel (ph),  
and he came there -- I don't think he was  
there that long, but he came -- after I was  
there for a while, then he came to  
homicide. And he might have been there

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maybe two, three years. I really don't know.

MS. HUGGINS: His question is did you work with him.

A. Well, see, that's too broad of a question. We worked with all of them. Do you understand what I mean?

Q. I do.

A. Everyone that was in there at one time, you had something to do with them. If there's something specific you're looking at, whatever that is, you know... I didn't work with him a lot. Let's put it that way.

Q. Okay. When was the last time you spoke with Detective Bogan?

A. Bohan, you mean?

Q. Yeah. Bohan. Excuse me.

A. Maybe three, four years ago.

Q. Okay. Where did you run into him?

A. Well, every year the PBA, Police Benevolent Association, has, like, a summer picnic, and you run into some of the

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officers that you've seen through the years, and I think I seen him there. Things, like, of that effect. Maybe a stag for somebody, a reunion, those kind of things. But, you know...

Q. Was there a PBA picnic last year?

A. No. It was the pandemic. No.

Q. Right. I mean, I figured that. But the year before there would have been one?

A. Sure, yes.

Q. Okay. Do you recognize Detective Reginald Minor's name?

A. Yes.

Q. When was the last time you spoke to Detective Minor?

A. Well, from -- well, I went to the district attorney's office in 2003 and was a DA investigator. Frank Clark hired me. And I continued to work in that capacity with Rick Sedita and with John Flynn. And he'd come in there, because he was still in homicide, and I would see him there, you know, doing testimony on cases. So I'd run

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into him, say, Hi, how are you doing,  
stuff -- things like that, you know.

Q. Since 2003 have you spoken to  
Detective Minor?

A. Yeah, when I was -- yeah, in the  
DA's office.

Q. Oh, okay. I guess I  
misunderstood your testimony.

A. I was in the DA's office from  
2003 to 2018. So when these officers that  
were still in homicide would come to the  
DA's office to testify in cases, then, of  
course, I'd run into them. And they knew  
me from being a former homicide.

Q. And Detective Riga also went to  
the DA's office?

MS. HUGGINS: His question was  
when did you last speak to Frankie  
Minor.

A. Okay. Well, I'm out of there two  
years. Probably maybe three years ago, two  
and a half years ago.

Q. Okay.

A. It was a, How ya doing, that kind

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of a thing.

Q. Sure.

Detec -- Chief Riga also went to the district attorney's office; is that correct?

A. Yes. After me.

Q. After you?

A. Yes.

Q. Ah, gotcha.

A. Like I said before, Charlie Fieramusca was the first chief, and then Riga was the chief after that. And when I went to the DA's office, Riga came a few years af -- maybe a couple years later, two, three years later. And Frank Sedita made him chief.

Q. Have you spoken to Chief Riga since you left in 2018?

A. Yes. You know, briefly, Hello, how are you, stuff like that.

Q. Okay. When was the last time you spoke with Mark Stambach?

A. About two years ago.

Q. Where was that?

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A. At a golf tournament.

Q. Is this a golf tournament of detectives?

A. That, and we had another organization. And he was a member of the Bridgewater, which is in Canada, and I golfed with him a couple of times there, like two, three years ago. But since then, not much after that.

Q. Okay. Do you know a Detective James Giardina?

A. Yes.

Q. And when was the last time you spoke with Detective Giardina?

A. Probably about the same time, two, three years ago. Once I retired, you know, I had my -- the friends I have, you know. But that was about it, about two, three years ago.

Q. Do you know a Detective Sergeant Robert Chella?

A. Yes.

Q. And when was the last time you spoke with Detective Chella?

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A. Again, probably about a year and a half ago.

Q. What did you talk about?

A. At a party that he was attending at that time. At a restaurant I saw him.

Q. Okay.

A. You run into these people.

Q. Right.

What was the party for where you saw Detective Chella?

A. I don't know if it was a retirement party. And we were in a group one time, about four or five of us, would meet at someone's house, and that was about two years ago, and he was there at the party.

Q. And what about Detective Masecchia, when was the last time you spoke with him?

A. About maybe in the summertime.

Q. You mean seven months ago, give or take?

A. Yeah, six, seven -- because he was playing golf, and I play golf, and I



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saw him at the same golf course. Stuff like that.

Q. Okay. And --

A. He and I continue to be friends, stuff like that, you know.

Q. Sure.

When was the last time you spoke with Detective Aronica?

A. Again, this past summer in a restaurant. When they were open.

Q. Now, when did you first become aware of this lawsuit?

A. When I was served the subpoena.

Q. Okay. Could you give me a rough date.

A. The date when I was served the subpoena? No, I don't recall.

Q. Did somebody come to the house -- withdrawn.

Did somebody hand you a summons with a complaint attached to it?

A. I think I received it in the mail.

Q. Okay. Did you read it when you

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received it?

A. Yes.

Q. Besides your counsel, did you discuss the lawsuit with anyone else?

A. No, I really did not.

Q. Did you ever call --

A. My wife, things like that, but nobody else.

Q. Did you ever call up any of the other detectives and say, Hey, guys, did you get this lawsuit? What's it about?

A. No, I did not.

Q. Now, we established that you recognize the name Cory Epps, right?

A. Yes.

Q. And you were working in the district attorney's office until 2018; is that right?

A. That's correct.

Q. Do you remember the Tomika Means murder and Cory Epps being reinvestigated by the district attorney's office?

A. I do.

Q. Were you part of that

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reinvestigation?

A. Myself and Joe Riga, Chief Riga.

Q. Okay. When did you first start reinvestigating the Tomika Means murder?

A. Well, when we found out there was an appeal. I don't know if it was you, particular, but a couple of lawyers came to the -- wanted to talk to us, talked to John Flynn at that time. So it had to be maybe three years ago.

Q. Who's John Flynn?

A. Well, he's the current district attorney.

Q. When you say the district attorney, you mean he's actually the district attorney for the County of Buffalo? Erie County, rather.

A. Yeah. I worked for three of them: At one time Frank Clark, he was the -- and then it was Frank Sedita, and then John Flynn. And I was there for all three of them. But I retired in 2018.

Q. When you said some lawyers came to talk to you, do you know who those

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lawyers were?

A. What's the name of the organization? That you're probably a part of.

Q. Well, actually, I'm not. But I do know Mr. Garber. Does that refresh your recollection?

A. Yeah, I think he was one of them, yes.

Q. And a woman named Rebecca?

MS. HUGGINS: Do you remember who you met with?

THE WITNESS: No, I don't. I don't remember. I don't remember specifically. It was a few gentlemen and also a female at one time.

Q. Do you remember a, frankly, guy who's pretty short, attorney?

A. Yes.

Q. Very animated?

A. I do.

Q. Okay. And do you remember a woman that's taller than him, long, black, curly hair?

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A. Yes, I do.

Q. Can you explain how it came about that you spoke to those attorneys?

A. Well, they knew that Riga and myself were involved in that case, and they wanted to, I guess, get our feelings on it, you know.

Q. Okay.

A. What we knew about it.

Q. Now, besides discussing, I guess, the investigation with the attorneys, did you do anything else with respect to the investigation?

A. We went and talked to Jackie Bradley.

Q. When did you talk to Jackie Bradley?

A. I don't remember the date. But it was during that time period within the last -- probably 2017, maybe.

Q. Did you take notes during your conversation?

A. Joe Riga did, I believe.

Q. And what did Jackie Bradley tell

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you during that conversation?

A. Well, she was upset because I guess that program seeked her out a couple of times to speak with her, once at the place where she worked, and she was upset that they were -- in her words, that they are bothering her, and that she was adamant that she picked out the right person. She believed that Cory Epps did it.

Q. Did you ever show her in this recent phase of the investigation a photograph of Russell Montgomery?

A. I didn't, no.

Q. Did anybody else show her a photograph of Russell Montgomery in your presence?

A. I don't believe so.

Q. Besides --

A. I mean -- go ahead.

Q. No. Sorry. Please finish.

A. It wasn't our capacity to do that, you know what I mean? We weren't investigating the case at that time, which was, we felt, solved.

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Q. Besides Jackie Bradley saying that the Exoneration Initiative had been bothering her, what else did she say?

A. Well, she never wavered from her story. Basically, what she told us at the beginning, stayed with that.

MR. RICKNER: We've been going about an hour and a half, thanks to my late start. Do you guys want to stretch your legs? I want to. So I'm just going to go ahead and say if we can take 10, maybe 15, that would be great. Are you okay with that?

MS. HUGGINS: Rob, I have a phone call that I have to make at 1:00. So --

Do you need a moment to stretch your legs?

THE WITNESS: Whatever you want to do.

MS. HUGGINS: Do you want to go for maybe 20 more minutes and then I can make the call.

MR. RICKNER: Can I take five,

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and then I'll just run back.

THE WITNESS: You got it.

MR. RICKNER: Okay.

(Whereupon, a recess was taken  
between 12:32 and 12:39 p.m.)

BY MR. RICKNER:

Q. With regards to the  
reinvestigation, besides talking to  
Jacqueline Bradley, did you do anything  
else, of any -- broadly, both -- whether  
documents, witnesses, anything?

A. I can't recall our first -- XXX,  
XXX XXXXX?

Q. Yeah.

MR. RICKNER: Can we refer to her  
as Witness 1? I'm going to ask the  
court reporter to refer to her as  
Witness 1.

MS. HUGGINS: Can we just go off  
the record briefly for you and I to  
talk about it?

MR. RICKNER: Yeah.

(A discussion was held off the  
record.)



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BY MR. RICKNER:

Q. So you spoke to Witness 1; is that correct?

A. I did.

Q. How many times?

A. I think twice. I believe twice, yeah.

Q. Let's just -- going back to the first conversation, can you tell me roughly when that was?

A. I don't recall the date. Maybe 2017, but I don't know the month and stuff like -- you know.

Q. Was this conversation in person or over the phone?

A. In person.

Q. Was anybody with you?

A. Chief Riga.

Q. Anyone else?

A. No.

Q. During this first conversation, what did Witness 1 tell you?

A. She gave us information that she believes that Cory Epps was innocent.

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Q. Besides that conclusion, what information did she provide regarding Mr. Epps's innocence, in detail?

A. She thought another person actually committed the murder.

Q. What was the name of that other person?

A. Montgomery.

Q. Russell Montgomery?

A. Russell Montgomery.

Q. Why did Witness 1 believe that Russell Montgomery committed the murder?

MS. HUGGINS: Form.  
You can answer.

A. Why?

Q. Yeah.

MS. HUGGINS: Well, what -- my form objection is --

MR. RICKNER: I get ya.

Q. What information did Witness 1 provide to you to support her statement that Russell Montgomery committed the murder?

A. Someone told her that Russell

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Montgomery committed the murder.

Q. Who told her that?

A. Meka (ph) Anderson, Pumpkin.

Q. Did she bring up the name Paul Pope in the interview?

A. She did.

Q. Did she know Paul Pope?

A. Yes.

MS. HUGGINS: And the "she" --  
(Simultaneous speakers.)

(The court reporter requested clarification.)

MS. HUGGINS: I said and the "she" you are referring to is Witness 1?

THE WITNESS: Yes.

BY MR. RICKNER:

Q. How did Witness 1 know Paul Pope?

A. I think they were just friends.

Q. Did Witness 1 ever indicate that Paul Pope told her that Russell Montgomery had confessed to the murder?

A. Repeat that again.

Q. Did Witness 1 ever say that Paul

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Pope had told her that Russell Montgomery had told him that he committed the murder?

A. Yes.

Q. Did you provide a photograph of Russell Montgomery to Witness 1?

A. No.

Q. Besides what we've detailed, in the first conversation did Witness 1 say anything else of significance?

A. Other than that Witness 1 was told by Anderson that Russell Montgomery did it.

Q. Okay.

A. Other than that, no.

Q. When you spoke with Witness 1, did you believe her to be credible?

A. No, not at the time.

Q. At some point did your opinion of her credibility change?

A. Well, until we talked to Jackie Bradley again. And no, it did not change. I mean, she was a nice person, but no, it didn't change.

Q. You also indicated that you had a

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second conversation with Witness 1?

A. She came to the homicide -- or not homicide, the district attorney's office, and we spoke with her there.

Q. Who was present during that conversation?

A. Donna Milling, who was in charge of the appeals, and so was Joseph Riga. And David Heraty. He's an assistant DA.

Q. And what was discussed during the second meeting?

A. Basically the same thing, that she was indicating that Paul Pope and -- that she believed that Paul Pope, who later got killed, or was convicted -- or Russell Montgomery was convicted for killing Paul Pope, she believed that he still is the killer of Tomika Means.

Q. Besides interviewing Jacqueline Bradley and Witness 1, did you take any other steps with respect to the reinvestigation of the Means murder?

A. No.

Q. Did you interview any other

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witnesses?

A. No, I didn't.

Q. Did you collect any documentary evidence?

A. No.

Q. Did you come to any conclusions with respect to the reinvestigation?

MS. HUGGINS: Form.

You can answer.

A. I still believe that Cory Epps did it.

Q. Did you share this information with Mr. Riga, Chief Riga?

A. We spoke about it.

Q. Did Chief Riga ever say whether or not he thought Cory Epps did it following the reinvestigation?

A. Pardon me?

Q. Did Chief Riga ever say that he thought Cory Epps was innocent or not during one of your conversations following the reinvestigation?

A. He was leaning that way.

Q. You said he was leaning towards

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thinking that Cory might be innocent?

A. Yes.

Q. Did anyone at the district attorney's office make any determination with respect to Mr. Epps's guilt or innocence?

A. Not to my knowledge.

Q. Did you discuss it with one of the district attorneys?

A. The only person we discussed it with was District Attorney John Flynn.

Q. And what did he say?

A. He wasn't sure at that time, as well, until he looked into it further.

Q. Would it be fair to say that you were aware that Cory -- withdrawn.

You know that Cory Epps was released from prison, right?

A. I do.

Q. Okay. When did you learn that information?

A. Well, just about the time they released him, whenever that was. I don't know the date.

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Q. Did you have any conversations with any of the detectives regarding his release?

A. No.

Q. Did you, you know, for example, call up, you know, Detective Aronica and say, Hey, did you hear about this?

A. No. It is what it is. When he was released and it was overturned, that was -- as far as I was concerned, it was over with.

Q. I'd like to go back to -- sorry to lose my place.

I'd like to go back to Exhibit 68.

A. I have it.

Q. Great.

Now, based on your review of Exhibit 68, would it be correct to say that Russell Montgomery, as of May 4, 1998, was a suspect in the murder of Paul Pope?

A. Yes.

Q. And if you remember, would it be correct to say he had been a suspect for



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quite some time at that point?

MS. HUGGINS: Form.

You can answer.

Q. Couple weeks?

A. Maybe, yes.

Q. Did you have a photograph of  
Russell Montgomery available to you?

A. No.

Q. Why not?

A. Well, this wasn't my case with  
the Pope/Witness 1 thing, and I didn't do  
much on that. I mean, later on I saw a  
photograph of him.

Q. Just a general matter of  
procedure, once Russell Montgomery became a  
suspect, would his photograph have been  
pulled from any available source?

A. Yes.

Q. And would detectives have also  
determined basic information like his  
height and weight, whether he wears  
glasses, things like that?

MS. HUGGINS: Form.

You can answer.

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A. Yes.

Q. And that information would have been stored in the homicide file?

A. It would have been -- in what file?

Q. The Paul Pope file.

A. Oh, yes.

Q. Now, when there is a homicide trial going on, would the detectives at the squad be generally aware that one of their cases was going to trial?

A. Yes.

Q. Would you guys talk about it?

A. Yes. Brainstorming, things like that.

Q. Some people would actually disappear and go testify, right?

A. Yes.

Q. Not disappear, but they'd leave the squad and go testify, right?

A. Yes. Whether they had that case or whatever they were working on.

Q. Right. And I think it would be fair to say that Chief Riga was aware of

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2 when there was or wasn't a homicide, right?

3 A. Oh, yes.

4 Q. Withdrawn. Homicide trial.

5 Obviously he knows there's a homicide.

6 That's his whole job. But homicide trial.

7 Yes?

8 A. Yes.

9 MR. RICKNER: Okay. I'd like to

10 mark this 73, Epps DA00937.

11 (P73 Bates No. EPPS-DA00937 was

12 marked as Exhibit No. 73 for

13 identification, as of this date.)

14 MS. HUGGINS: The witness has the

15 exhibit.

16 BY MR. RICKNER:

17 Q. Now, did you author Exhibit 73?

18 A. I did.

19 Q. This is a P73?

20 A. Yes.

21 Q. Now, would it be correct to say,

22 based on this document, that you were told

23 to drive from the Pancake House to the

24 location of the murder to see how long it

25 took?

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A. Yes.

Q. Who assigned you to do that?

A. Chief Riga.

Q. Do you know what led Chief Riga to want to do that?

A. Well, this is where the homicide occurred, at this location, and I guess Mr. Epps stated that he was at a pancake house when this occurred.

Q. Right. Would it be fair to say that being at the Pancake House was a kind of alibi?

A. Yes.

Q. And what specifically did Chief Riga ask you to do?

A. Well, when we found out that Mr. Epps had an alibi, that he was at the Pancake House, my job was to see how long it would take, three different routes I took, how far it would take, go from Delevan and Chelsea to that Pancake House. And that's what I did.

Q. And what was the purpose of doing that?

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A. Well, that Epps would have had a chance, then, to go to the Pancake House after he committed this murder.

Q. So you were trying to disprove that alibi that Epps had?

A. Yes.

Q. That's yes? Sorry.

A. Yes.

MR. RICKNER: Is now a good time?

THE WITNESS: Pardon me?

MR. RICKNER: Talking to Maeve.

I've got another section I'd like to kind of keep together. We're getting pretty close.

MS. HUGGINS: Okay. This meeting is fairly short. It rarely runs over 10 minutes. So if we want to take 15 to be safe, come back at 1:15.

MR. RICKNER: Yep. I'm not hungry yet. So you know my secret snack stash.

MS. HUGGINS: All right.

MR. RICKNER: So let's just call it 1:15, then, make sure nobody's

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running around, okay?

MS. HUGGINS: Thanks, Rob.

MR. RICKNER: Thank you.

(Whereupon, a recess was taken  
between 12:55 and 1:22 p.m.)

BY MR. RICKNER:

Q. Detective, I think we discussed  
earlier there was an alibi regarding the  
Pancake House. Do you remember that?

A. I do.

Q. Are you familiar with that  
Pancake House?

A. Yes. I don't live too far from  
there.

Q. It's an all-night joint?

A. Pardon me?

Q. It's an all-night restaurant?

A. Yes. It's closed now.

Q. But, you know, in 1997 and 1998  
it was a 24-hour affair, right?

A. That's correct.

Q. Do a lot of police officers hang  
out there because it was 24 hours?

A. I don't know about that, because

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that's in Amherst; it would be Amherst Police Department. I mean, I went there occasionally, during the day when I wasn't working, things like that, but never hung out there. I've never seen a lot of police officers in there.

Q. Okay. Would it be fair to say in 1997 you were -- and 1998 you were pretty familiar with the restaurant, though?

A. Yes.

Q. And you say it was right next to your house. Was that true in 1998?

A. Pardon me?

Q. You said earlier that the Pancake House was near where you lived. Was that true in 1998?

A. Yes. It was -- well, not near -- it was probably about four or five miles away.

MR. RICKNER: Maeve, maybe you should disconnect and reconnect? I'm seeing a marked decline in the quality of -- I'm also worried that I just missed a bunch of things he said.

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(A discussion was held off the record.)

BY MR. RICKNER:

Q. Just talking about the Pancake House, and I think -- I don't know if we got this answered, but would it be correct to say in 1997 and 1998 you were fairly familiar with the Pancake House?

A. Yes.

Q. At some point it was revealed that Cory Epps had an alibi regarding the Pancake House, right?

A. That's correct.

Q. Do you know about when you guys found that out, meaning the detectives?

A. Well, I think at the time when Cory Epps came into the homicide unit regarding his vehicle.

Q. Okay. Would this have been maybe July of 1997?

A. Possibly.

Q. Did you ever investigate that alibi by going to the Pancake House and talking to witnesses?



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A. Well, this was early in the morning, and I didn't go personally to talk to anybody. There was -- you know what I mean? I just did this route.

Q. Right. But that was almost a year later, right?

A. Right.

Q. What I'm wondering is, as part of the initial homicide investigation, well prior to trial, did you go to the Pancake House to talk to any witnesses?

A. I didn't.

Q. Do you know if anybody else did?

A. I can't answer that. I don't know.

Q. Would it generally be standard practice to try to talk to witnesses to see if somebody's alibi checks out?

A. Yes.

Q. You mentioned that Joseph Riga told you to go to -- to try to drive the route to find the timing, right?

A. Right.

Q. When he did that, did he also

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tell you to go investigate witnesses at the Pancake House who might have remembered Mr. Epps?

A. I think he did send someone. It wasn't me. I don't recall that I went.

Q. Do you know what the result of that conversation was, if it occurred?

A. Only what I read in one of the P73s.

Q. Which is?

A. That someone had talked to the manager, and the manager does recall, or who could be the server, and the server does remember a black man with a female, and mentioned that he was watching his car through the window, because he didn't want anybody to mess with it or something. But I don't think he could identify the person. It was vague and -- you know, description, and what they ate, things like that.

Q. And did you guys take a statement from him? Did anyone take a statement from that server?

A. You know, I'm not sure. I'd have

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to look at the file.

Q. Now --

I'm sorry. One moment.

At some point in 1998 did you become aware of an anonymous letter?

A. Yes.

Q. And this was an anonymous letter that indicated that Russell Montgomery killed Tomika Means?

A. Yes.

Q. When did you learn about that anonymous letter?

A. In the homicide office. I don't know if Riga was talking about it. People were just talking about this letter.

Q. And do you remember about when that occurred?

A. I think it was during the trial of Epps. It might have been right after it.

Q. And did you know who provided that anonymous letter?

A. Not at the time, I did not.

Q. Did you take steps to determine

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who provided that anonymous letter?

A. No, I did not.

Q. Did you ever find out who provided the anonymous letter?

A. Well, later on it was discovered that Meka Anderson, Pumpkin, wrote the letter.

MS. HUGGINS: His question is did you take steps to find out who wrote that letter.

THE WITNESS: No, I did not. I answered that, I thought.

Q. Somebody, however, determined that it was Pumpkin that wrote the letter?

A. Yes.

Q. When did detectives determine that Pumpkin wrote the letter?

A. I'm not sure.

Q. Do you remember who determined that Pumpkin wrote the letter?

A. No, I don't recall who told me that -- who wrote the letter.

Q. Did somebody from the district attorney's office figure out who wrote the

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letter, or was it one of the detectives?

A. I heard information from the --  
information from the DA's office.

Q. Okay. And when did you find that  
information out from the DA's office?

A. Hold on. We're blank.  
We're back.

Q. Oh. I was going to say, you guys  
looked fine from here.

When did you learn from the  
district attorney's office that Wymiko  
Anderson wrote the anonymous letter?

A. Well, it was after the  
conviction, soon thereafter, of Epps.

Q. Okay. And did you have any  
interactions with Wymiko Anderson prior to  
this anonymous letter coming to light?

A. Yeah. She came into the office  
during the -- I think it was during the  
trial of Cory Epps or right before that,  
after he was arrested.

Q. If I sit -- are you aware that  
Anderson provided a statement about April  
17 of 1998, thereabouts?

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A. Yeah, I do, but I don't recall the whole thing. But I do recall a statement.

Q. Okay. Were you present when she gave that statement?

A. You know, I think I was.

Q. Did you have conversations with Ms. Anderson in April of 1998?

A. You mean during the statement or prior to --

Q. Withdrawn.

Prior to Wymiko Anderson giving a statement, she was interviewed by officers; is that right?

A. Yeah. She came in -- there was a number of officers there when she came in.

Q. Okay. And besides you, who else do you remember being there?

A. Giardina, Stambach, Chief Riga. There were a number of officers when she came in; there had to be at least four there. I don't know who was changing shifts or were just -- they were there on other cases and reading their files when

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she came in.

Q. Okay.

MS. HUGGINS: Form. I think we should clarify, when you say "present," what are you referring to?

A. Well, I'm referring --

MS. HUGGINS: No, no. Form as to the question, just the use of the word "present."

MR. RICKNER: Okay.

BY MR. RICKNER:

Q. I mean, at some point -- uh-oh. Oh! Weird.

Sorry. My screen just did something weird.

A. I see you.

Q. At some point after Ms. Anderson came into the homicide squad, she spoke about the Paul Pope murder, right?

A. She did.

Q. Were you there when she discussed the Paul Pope murder?

A. When she first came in, you mean? At that point when --

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Q. Any time she came in.

A. I think just during the -- when the statement was taken. But prior to that, there were -- she came in, but other people were doing whatever they do on other cases. It wasn't all focused on what she was saying.

Q. Sure. But -- so when she gave the statement, though, who else was present?

MS. HUGGINS: Form, and just my objection as to the use of the word "present." Are you meaning --

MR. RICKNER: I mean in the room.

MS. HUGGINS: In the office or the room?

MR. RICKNER: Let me ask that.

Q. When Ms. Anderson came into the homicide squad, is it fair to say you took her into the interview room, or somebody took her into the interview room?

A. In the homicide there's four rooms.

Q. Okay.



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A. Not just one room. So there's other detectives in other rooms. They may know that she's there, but -- you know. Then you go into -- if you took a statement, you took her into the statement room.

Q. Right. So when Ms. Anderson goes into the statement room, were you there?

A. I don't recall. I may have been.

Q. Do you remember anybody who was in there with her?

A. No, I don't.

Q. Do you remember anything that she said during her statement?

A. Just that -- I'm not sure, but she was the girlfriend of Montgomery at one time, or Pope, one of them, and that she was told by someone that Montgomery did the shooting of Tomika Anderson and Paul knew about it, or he told him. And --

Q. When you say Tomika Anderson, you mean Means, right?

A. I mean Means. I'm sorry.

Q. Got it.

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Now, there was -- I'm sorry.  
Hold on for a second.

You mentioned that there were a couple of different rooms in the homicide squad, right?

A. That's right.

Q. There's the statement room. What were the other rooms that the detectives used?

A. Chief, the chief's office, good size room; a big room there where most of the detectives would be; there was a lieutenant's room that was right there; and then another room where files were kept.

Q. Got it.

And if you wanted to go look at a file relating to an investigation, would somebody else have to go get the file for you, or could you just go to the, I don't know if it was shelves or drawers or something, and pull it out?

A. Either Marilyn Lanc would get it or Lieutenant Conwall.

Q. Got it.

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MR. RICKNER: I'd just like to  
mark -- can you please find COB1001.

MS. HUGGINS: 74?

MR. RICKNER: Sounds right.

Court Reporter, is it -- are we  
up to 74?

THE COURT REPORTER: Let me see.  
I can do a quick search.

MR. RICKNER: And can we also do  
COB -- the photo arrays.

THE COURT REPORTER: It's 74.

MR. RICKNER: So we're up to 74.

And can we mark this Photo Arrays  
that's 992 through 998.

MS. HUGGINS: As 75.

MR. RICKNER: Yep.

MS. HUGGINS: Okay. The witness  
has the exhibits.

(6/4/98 document Bates stamped  
COB1001 was marked as Exhibit No. 74  
for identification, as of this date.)

(Photo arrays, Bates Nos. 992  
through 998, were marked as Exhibit No.  
75 for identification, as of this

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date.)  
BY MR. RICKNER:

Q. So going back, is it fair to say that at some point, let's say June of 1999 you received information -- can you hold on for one second?

(A discussion was held off the record.)

BY MR. RICKNER:

Q. So at some point Wymiko Anderson indicated that somebody named Connie Ferguson might have been involved in the Means murder; is that fair to say?

A. Yes.

Q. At the time you hadn't worked out who the female was, right?

A. That's correct.

Q. And by "you," I mean just the detectives in general hadn't worked out who the female was?

A. That's right.

Q. I'd like you to take a look at Exhibit 75. Now, is there -- this is basically printed out in the way that I

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received it. I don't know if the  
photographs are out of order or anything  
like that. But can you tell me which of  
these photo arrays has Constance Ferguson  
in it?

A. No, I can't tell. I don't  
remember.

Q. Can we reach an agreement that  
one of them probably has Constance  
Ferguson?

A. Well, that's why it was  
generated, so I'm sure -- assuming she is  
in it.

Q. Were there any other women that  
were placed into photo arrays?

A. Any other women? Yeah. They are  
all women.

Q. Right.

MS. HUGGINS: Form.

Q. I mean besides Constance  
Ferguson, do you remember their names?

A. No, I do not.

MS. HUGGINS: Form. Are you  
referring to the fillers in these photo

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arrays or --

MR. RICKNER: No, no. I should ask a better question.

BY MR. RICKNER:

Q. You created -- withdrawn.

You or Masecchia created a photo array that contains Constance Ferguson as the suspect with five fillers, right?

A. That's correct.

Q. There are other photo arrays with other potential suspects? And what I'm asking is do you happen to know who those people are?

A. No, I do not.

Q. Okay. Now, if we look at Exhibit 74, this is an affidavit that was signed by Wymiko Anderson?

A. Yes.

Q. And it wasn't notarized; is that right?

A. No, it's not.

Q. Generally, are these notarized?

A. Yes.

Q. Now, she confirmed that one of

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the people in the photo arrays that she identified in spot 5 was the girlfriend of Russell Montgomery, right?

A. That's right.

Q. Now, after Wymiko Anderson identified this as the girlfriend of Russell Montgomery, did you take the same photo array to Jackie Bradley?

A. No.

Q. Did you create another photo array with Constance Ferguson in it?

A. I don't recall.

Q. Did you or any other detectives show this photo array --

A. This particular photo array?

Q. Let me sort of ask the question and then we'll see if it works better, okay?

Did you or any other detective take a photo array that contained Constance Ferguson as the suspect and show it to Jackie Bradley?

A. I did not.

Q. Do you know if anybody else did?

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Costantino 112

A. I don't know.

Q. Do you know if anybody ever showed a photograph or photo array containing Russell Montgomery to Jackie Bradley?

A. I didn't.

MR. RICKNER: I'd like to mark Epps 241 to 242 as Exhibit 76.

(Document Bates stamped Epps 241 through 242 was marked as Exhibit No. 76 for identification, as of this date.)

MS. HUGGINS: The witness has the exhibit.

BY MR. RICKNER:

Q. Can you identify Exhibit 76?

A. It's an affidavit that I swore to in a court regarding Cory Epps, People of the State of New York versus Cory Epps.

Q. Can you look at paragraphs 6 and 7 for me on the second page.

Does reading paragraph 7 refresh your recollection that you showed a photo array that contained Ferguson to Jackie



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Bradley?

A. Let's see, that's quite a while ago. If I wrote it, then I did it.

Q. Okay. But you don't have an independent recollection?

A. Yeah, I recalled showing her this, now that I'm reading it.

MS. HUGGINS: Does that remind you? Does it actually refresh your recollection?

THE WITNESS: It does.

Q. Now, I think you testified earlier that you did not show a photo array containing Russell Montgomery, right?

A. That's right.

Q. Now, the purpose of showing the photo array containing Ferguson was to see if she was the female driver, right?

A. That's correct.

Q. Is it correct to say that you didn't have any reason to believe that Ferguson knew Epps?

A. I didn't know that one way or another. I just -- you've got to -- you

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gotta say that question a little  
differently.

MS. HUGGINS: Do you understand  
the question?

THE WITNESS: No, I do not.

Q. All right. At the time in 1998,  
did you have any reason to believe that  
Epps was connected to Ferguson in any way?

A. No.

Q. But at the time you believed that  
Epps was the driver, right?

A. I do, yes. No. He was not -- a  
girl was driving --

Q. The passenger.

A. She was the passenger, right.

Q. And pulled the trigger of the gun  
that killed Tomika Means, right?

A. Right.

MS. HUGGINS: I'm sorry, I think  
you guys said the genders backwards,  
that the driver of the vehicle was a  
female and the passenger was a male.

THE WITNESS: It was. That's  
correct.

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MR. RICKNER: Okay. Yes.

THE WITNESS: We agree on that.

BY MR. RICKNER:

Q. Okay. So at the time in 1998 when you showed Jacqueline Bradley the photo array containing Ferguson, you had no reason to believe one way or the other that she was connected to Epps, correct?

A. That's correct.

Q. But did you know through Wymiko Anderson that Constance Ferguson was Russell Montgomery's girlfriend, right?

A. That's correct.

Q. So it at least stands to reason that if Ferguson was the female driver, that Russell Montgomery might be the passenger, right?

MS. HUGGINS: Form.  
You can answer the question.

A. Yes.

Q. So what I'd like to know is why didn't you show a photo array containing Russell Montgomery to Jacqueline Bradley?

A. It says we later showed this

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array to Jacqueline Bradley.

Q. Right. But if you look at the previous paragraph, that was the Ferguson photo array, right?

A. Yes.

Q. Okay. What I want to know is why didn't you show Jacqueline Bradley a photo array containing Russell Montgomery?

A. Well, I didn't. I don't know if anybody else showed her.

Q. Well, could you have?

A. Could I have or would I have?

Q. Could you have? Did you have the means to do so?

A. Yes.

Q. And at least as of June of 1998, you had a witness who was claiming that Russell Montgomery killed Tomika Means, right?

A. That's correct.

Q. And you also had an eyewitness to the Means murder, right?

A. Jackie Bradley, right.

Q. Why wouldn't you try to determine

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whether or not Jackie Bradley would identify Russell Montgomery as the shooter?

A. Jackie Bradley was confident, and if she could have identified that woman, she could have. And when she didn't identify her as the driver, and at that time we thought, well, she identified the driver -- she gave a pretty good description of the driver. And when she couldn't identify her, we didn't -- I didn't -- I don't think I -- I moved on to show or not to show her. That was me. But somebody else might have showed her.

Q. Did you have any discussions with the district attorney regarding Wymiko Anderson and her statement? In 1998.

A. What district attorney are you talking about?

Q. Any district attorney.

A. Schwegler?

Q. Sure.

A. Okay. He's the one supposedly told me about the letter.

Q. Okay.

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2 MS. HUGGINS: Answer his specific

3 question.

4 MR. RICKNER: Right. Thank you,

5 Maeve.

6 Q. My specific question is --

7 MS. HUGGINS: If you need the

8 question repeated back to you, they can

9 have it read back to you.

10 MR. RICKNER: Would you read it

11 back? That's probably a better way to

12 do it.

13 (Whereupon, a portion of the

14 record was read by the reporter.)

15 THE WITNESS: Yes.

16 BY MR. RICKNER:

17 Q. Okay. What discussions did you

18 have with the district attorney regarding

19 Wymiko Anderson's statement in 1998?

20 A. Mr. Schwegler told us that Wymiko

21 Anderson was the author of that letter.

22 Q. Okay. Following determining

23 that, you had separate interviews with

24 Wymiko Anderson, right?

25 A. I did not have several interviews

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with her.

Q. Separate.

A. Oh, separate. The statement we took. But no. And I remember her coming in the office. I didn't interview her at that time.

Q. Okay. And that point you're talking about June of 1998?

A. Right.

Q. Okay. Following the photo arrays, did you communicate anything to the district attorney regarding the results?

A. Yes, we did.

Q. Okay. So besides your communication regarding the photo arrays where spoke to the district attorney, and the communication where the district attorney told you about the anonymous letter, did you have any other conversations with the district attorney?

A. No.

Q. Regarding Wymiko Anderson in 1998, to be clear.

A. I think we had to testify

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regarding this information with this letter.

Q. And that was some time later?

A. Yes.

Q. And did you have an opportunity to review your testimony prior to this deposition?

A. Yes.

MR. RICKNER: And I'd just like to mark the testimony as Exhibit 77.

(Costantino testimony, Bates Nos. EPPS-DA1384 through 1400, was marked as Exhibit No. 77 for identification, as of this date.)

MS. HUGGINS: The witness has the exhibit.

BY MR. RICKNER:

Q. Can you just confirm for me that this is the testimony that you reviewed prior to your deposition.

A. Yes, it is.

Q. Just hold on for one second.

MR. RICKNER: So I'm pretty much wrapping up. Make sure I haven't



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missed anything.

I'm just going to go through my notes for one second and try to find one other thing.

Q. Detective, did you ever have any communications with defense regarding the anonymous letter?

A. No.

MR. RICKNER: Maeve, do you have any questions?

MS. HUGGINS: I do not.

MR. RICKNER: Okay.

Q. Well, Detective, you've been testifying here for several hours. Is that fair to say?

A. Yes.

Q. And do you have anything regarding the Tomika Means or Paul Pope murders that we haven't discussed that you think is important?

A. No.

MS. HUGGINS: Form.

A. No.

Q. And have you testified truthfully

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and accurately here today just like you  
were in a court of law?

A. I have.

Q. Is there anything you want to  
correct with respect to your testimony?

A. Not at this time, no.

Q. You understand that you will be  
given an opportunity to review this  
deposition testimony?

A. I do.

Q. And if you make corrections, I'll  
be able to cross-examine you with that at  
trial?

A. Yes.

MR. RICKNER: No further  
questions.

MS. HUGGINS: Thanks, everybody.

THE COURT REPORTER: I just need  
to get transcript orders on the record.

MS. HUGGINS: I'll be ordering.

MR. RICKNER: Same. The way I've  
been doing is, you know, digital is  
great. If I can just get one copy of  
the original and the exhibits for my

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file. I don't need the two copies and the condensed or anything, if I can -- I can rattle off more. No reason to waste trees now.

THE COURT REPORTER: So you want one hard copy and hard copy exhibits?

MR. RICKNER: Yes. Just one original for the record, and then the rest digital.

MS. HUGGINS: I will take one copy PDF and PDF exhibits.

(Time noted: 2:04 p.m.)



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\_\_\_\_\_  
ANTHONY COSTANTINO

Subscribed and sworn to  
before me this            day  
of                            2021

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CERTIFICATE

STATE OF NEW YORK )

) ss.

COUNTY OF NEW YORK)

I, Pamela Grimaldi, Registered Professional Reporter, Certified LiveNote Reporter, and and Notary Public within and for the State of New York, do hereby certify:

That ANTHONY COSTANTINO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

---

PAMELA GRIMALDI, CRR, CLR

February 12, 2021

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February 12, 2021

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